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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	FCC 94-61
)	
Implementation of Section 309 (j))	PP Docket No. 93-253
of the Communications Act -)	
Competitive Bidding)	

To: The Commission

PETITION FOR RECONSIDERATION

The Rural Cellular Association ("RCA")¹, by its attorneys, and pursuant to Section 1.429 of the Commission's Rules, respectfully requests reconsideration of the Commission's "Second Report and Order" in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, 59 Fed. Reg. 22,980 (1994) ("Second R&O").

The competitive bidding rules adopted by the Commission are inconsistent with the Communications Act of 1934, as amended ("the Act"), and disserve the public interest. By virtue of its overly narrow definition of "rural telephone company", the Commission has adopted rules which fail to comply with the Congressional mandate set forth in the Omnibus Budget Reconciliation Act of 1993 ("Budget

¹ The RCA is an association comprised of small cellular operators providing service to rural America. RCA's members serve over eighty licensed areas across the country covering approximately 6.5 million in population. RCA member companies are affiliated with Local Exchange Carriers (LECs) who operate 50,000 or fewer access lines. RCA member companies are adversely affected by the rules that have been adopted in the above-captioned proceeding.

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Act"). A broader definition that would encompass a greater number of rural telephone companies would not only be consistent with Section 309 of the Act, it would serve the public interest by increasing the number of rural telephone companies eligible for bidding preferences, thereby increasing the chance that new-radio based services will be licensed to an entity that will provide the service to rural areas.

The Budget Act directs the FCC to ensure that licenses for new technologies be awarded in a manner that promotes "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays." (emphasis added). In order to carry out this mandate and ensure the provision of new radio-based services to rural America, the Commission must change its definition of "rural telephone company." RCA urges the Commission to modify the definition of "rural telephone company" to include independently owned and operated local exchange carriers that either operate 50,000 or fewer access lines or serve communities of 10,000 or fewer in population.

I. BACKGROUND

Historically, rural telephone companies have been the only providers of telecommunications services in rural areas. Larger companies chose not to provide telephone service to these less economically desirable areas. The commitment these telephone companies have made to provide their subscribers with new telecommunications services is readily demonstrated by their quick

roll-out of cellular services in the rural markets and the recent construction of radio-based wireless cable systems to provide video services to rural America.

The FCC and Congress have also recognized the commitment of rural telephone companies to serve the needs of rural subscribers and have afforded rural telephone companies appropriate treatment in recognition of this commitment. In 1984, Congress created a "rural exemption" to its telephone cable cross-ownership prohibition in order to ensure that cable service was made available to rural America.² More recently, Congress specifically mandated that the Commission award licenses for new technologies in a manner that promotes the following objectives:

- 1) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; and
- 2) the promotion of accessibility of new technology to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

See Budget Act, Section 309(j)(3).

II. DISCUSSION

New Rule Section 1.2110(b)(3) provides that: "a rural telephone company is an independently owned and operated local exchange carrier with 50,000 access lines or fewer, and serving communities with 10,000 or fewer inhabitants." 47 C.F. R.

² 47 U. S. C. § 533 (b)(3) (1993).

1.2110(b)(3) (emphasis added). This definition of "rural telephone company" inexplicably excludes many small independent telephone companies that serve rural areas.

In Amendment of the Commission's Rules for Rural Cellular Service,³ the FCC recognizing the variations in characteristics of rural areas, defined a rural service area for cellular purposes as "markets not categorized as Metropolitan Statistical Areas (MSAs) or New England County Metropolitan Areas (NECMAs)."⁴ The FCC then adopted a plan that recognized the existence of rural service areas throughout the country. Rural areas differ widely across the nation. For example, a person living in rural Virginia -- characterized by tobacco farms and rolling hills -- is never more than an hour's drive from a metropolitan area. Rural Wyoming, on the other hand, characterized by expansive ranches and mountain ranges, is more sparsely populated and much farther away from metropolitan areas. Rural telephone companies, like the rural areas they serve, differ from one another and cannot easily fit into the narrowly crafted definition set forth in Rule Section 1.2110(b)(3).

To illustrate, many of RCA's members, all of which are affiliated with independently owned and operated LECs, provide local exchange service to communities within RSAs. Several of these communities exceed 15,000, 20,000 and even 28,000 in population. Under the FCC's rule, these telephone companies, while

³ 60 RR 2d 1029 (1986).

⁴ Id. at 1031, fn. 1

independently owned and operated and controlling less than 50,000 access lines, do not qualify as a rural telephone company even though the communities are located within an FCC-recognized rural service area. Additionally, there are several other rural telephone companies that are independently owned and operated who serve only communities of 10,000 or fewer, but in total surpass the 50,000 access line benchmark and, therefore, do not qualify as a rural telephone company under the rule. Again, these communities are also located within RSAs.

The FCC's narrow definition not only fails to fully carry out the statutory mandate, it also fails to take into consideration past policy and rules concerning definitions of rural areas for other radio-based services. Accordingly, the definition should be modified to ensure that all rural telephone companies are given the opportunity to participate in the provision of new radio-based services to rural areas.

III. PROPOSAL

In order for the Commission to satisfy its statutory as well as public interest obligations, it must modify its definition of "rural telephone company" to broaden the class of entities eligible for "designated entity" status. As discussed above, Section 1.2110(b)(3) currently defines a rural telephone company as an independently owned and operated local exchange carrier with 50,000 access lines or fewer, and serving communities with 10,000 or fewer inhabitants. The RCA requests that the FCC modify this definition

by changing the conjunctive "and" to the disjunctive "or." If the definition is changed to allow companies to qualify as a rural telephone company based on either the number of access lines they serve or the population of each of the communities served, more rural telephone companies would be eligible for bidding preferences, thereby increasing the chance that new-radio based services will be licensed to entities that will provide the service to rural areas. Moreover, when viewed from a historical perspective, these more broadly defined rural telephone companies would increase the likelihood of new, innovative radio-based technology coming to rural America.


IV. CONCLUSION

Congress has explicitly defined the public interest as requiring special regard to and accommodation of the needs of rural America. It has recognized the desirability of fostering participation by rural telephone companies in the provision of new radio-based services. The RCA, therefore, respectfully submits that adherence to the Congressional mandate through the modification of the rules as proposed herein will serve the public interest.

Respectfully submitted,

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